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Attorneys for the USACM Liquidating Trust

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,

USA SECURITIES, LLC,

Debtors.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725-LBR

**USACM Trust's Reply to "Objection
to Motion for Summary Judgment to
Gunderson's Opposition to the
Objection to Proofs of Claim
Asserting Secured Status"**

**Hearing Time: December 14, 2007
Hearing Time: 9:30 a.m.**

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Pending before the Court is USACM Liquidating Trust's (the "USACM Trust")
Motion for Summary Judgment which seeks to reclassify secured claims filed by Direct
Lenders as general unsecured claims (the "Motion") [DE 4291]. Wynn A. and Lorraine J.

1 Gunderson (collectively, “Gunderson”) filed an objection to the Motion (the “Objection”)
 2 [DE 5332]. This reply to the Objection is supported by the USACM Trust’s Supporting
 3 Statement of Facts [DE 4293], Reply in Support of Motion for Summary Judgment (the
 4 “Reply”) [DE 4810] and Supplemental Statement of Facts [DE 4811].

5 The Objection opposes the Motion and asserts a secured claim based upon
 6 USACM’s alleged fraud. As previously briefed by the USACM Trust, fraud allegations
 7 are, as a matter of law, insufficient to establish a secured claim. (Reply [DE 4811], pp. 2-
 8 3.)

9 Further, Gunderson provides no documentation with the Objection that might
 10 establish a secured claim. There is no deed of trust, UCC-1, etc. Gunderson’s remaining
 11 valid Proof of Claim, No. 10725-02447-2¹, is attached as Exhibit A. It likewise provides
 12 no documentation that might establish a secured claim. Moreover, there is nothing in
 13 USACM’s records suggesting that Gunderson might have a secured claim. (Reply [DE
 14 4811], p. 3.)

15 The USACM Trust asks that the Court enter summary judgment reclassifying Claim
 16 No. 10725-02447-2 as a general unsecured claim subject to further objection.

17 Dated December 5, 2007.

18 LEWIS AND ROCA LLP

19 By /s/ RC (#6593)

20 Susan M. Freeman, AZ 4199 (*pro hac vice*)

21 Rob Charles, NV 6593

22 John C. Hinderaker, AZ 18024 (*pro hac vice*)

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27 ¹ Gunderson filed several proofs of claim, which were duplicative: 10725-02321, 10725-
 28 02322, 10725-02447-1, 10725-02447-2, 10725-02448-1, 10725-02448-2. Pursuant to the
 parties’ Stipulation [DE 4976], the Court entered its Order [DE 5007] disallowing all of
 the Gunderson claims except for Claim No. 10725-02447-2, which remains of record.

1 PROOF OF SERVICE

2 Copy of the foregoing mailed by
3 First Class, US Mail, postage
4 prepaid, on December 5, 2007
5 to the following interested party:

6 Wynn A. and Lorraine J. Gunderson
7 33941 N 67th St
8 Scottsdale, AZ 85262-7250

9 /s/ Renee L. Creswell

10 Renee L. Creswell
11 Lewis and Roca LLP
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